

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH G. DUNBAR,

Petitioner/Plaintiff,

Case No. 07-10993

v.

Honorable Patrick J. Duggan

RAYMOND BOOKER, et al.,

Respondents/Defendants.

**OPINION AND ORDER DENYING MOTION FOR
REHEARING/RECONSIDERATION**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on August 27, 2007.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On March 8, 2007, Joseph G. Dunbar (“Petitioner”) filed a *pro se* pleading consisting of a habeas corpus petition, brought pursuant to 28 U.S.C. § 2241(c)(3), and a civil rights complaint, brought pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 99 S. Ct. 1999 (1971).¹ This Court, on June 5, 2007, issued an order transferring Petitioner’s second or successive habeas petition to the Sixth Circuit pursuant to 28 U.S.C. § 1631 and dismissing his civil rights complaint without prejudice due to Petitioner’s failure to prepay the filing fee

¹Petitioner filed an amended pleading on March 28, 2007.

pursuant to 28 U.S.C. § 1915(g). (Doc. No. 11, 6/5/07 Or. at 5-6.) On August 3, 2007, Petitioner filed a motion for certificate of appealability, which was denied on August 14, 2007. Presently before this Court is Petitioner's Motion for Rehearing/Reconsideration of this Court's August 14, 2007 Opinion and Order.

Pursuant to Eastern District of Michigan Local Rule 7.1(g)(2), "[n]o response to [a] motion [for reconsideration] and no oral argument are permitted unless the court orders otherwise." Furthermore, the standard for a motion for reconsideration is set forth in Eastern District of Michigan Local Rule 7.1(g)(3), which provides:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

Thus, "[t]he Court will grant a motion for reconsideration if the moving party shows: (1) a 'palpable defect,' (2) that the defect misled the Court and the parties, and (3) that correcting the defect will result in a different disposition of the case." *Sundberg v. Keller Ladder*, 189 F. Supp. 2d 671, 674 (E.D. Mich. 2002). "A palpable defect is one which is obvious, clear, unmistakable, manifest, or plain." *Fleck v. Titan Tire Corp.*, 177 F. Supp. 2d 605, 624 (E.D. Mich. 2001).

In his motion, Petitioner contends that in denying Petitioner's motion for certificate of appealability the Court failed to mention that Petitioner "also filed [a] motion to allow his appeal concerning his civil rights lawsuit . . . to proceed in good faith." (Petitioner's

Mot. at 2.) The Prison Litigation Reform Act states that “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). As Petitioner contends, the Court, in its August 14, 2007 Opinion and Order, did not mention whether any appeal of the Court’s dismissal of Petitioner’s civil rights complaint would be in good faith. Nonetheless, because Petitioner has had three prior cases dismissed against him for being frivolous, malicious, or failing to state a claim, § 1915(g) bars him from appealing in forma pauperis. *See Drummer v. Luttrell*, 75 F. Supp. 2d 796, 805-06 (W.D. Tenn. 1999). Thus, the Court will not certify that any appeal from its dismissal would be in good faith, and Petitioner’s motion for reconsideration will be denied as Petitioner has failed to demonstrate that correcting the Court’s error will result in a different disposition of this case.

Accordingly,

IT IS ORDERED, that Petitioner’s Motion for Rehearing/Reconsideration is **DENIED**;

IT IS FURTHER ORDERED, that any appeal taken by Petitioner would not be done in good faith.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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